

1 I ask to be marked for identification as WTB  
2 Exhibit Number 199, Kay's available customer records for  
3 customers listed on the loading records for call sign  
4 WIK727, a four-page exhibit.

5 I ask to be marked for identification as WTB  
6 Exhibit Number 200, an excerpt from the Commission database  
7 record re: Call Sign WIK896, a four-page exhibit.

8 I ask to be marked for identification as WTB  
9 Exhibit Number 201, Kay's loading record re: Call Sign  
10 WIK896, a one-page exhibit.

11 I ask to be marked for identification as WTB  
12 Exhibit Number 202, Kay's available customer records for  
13 customers listed on the loading records for call sign  
14 WIK896, a one-page exhibit.

15 I ask to be marked for identification as WTB  
16 Exhibit Number 203, an excerpt from the Commission database  
17 record re: Call Signs WIK983 and WIL469, eight-page  
18 exhibit.

19 I ask to be marked for identification as WTB  
20 Exhibit Number 204, Radio Station Licenses for Call Sign  
21 WIK983 and WIL469, four-page exhibit.

22 I ask to be marked for identification as WTB  
23 Exhibit Number 206, Kay's loading record --

24 CHIEF JUDGE CHACKIN: Is this 205?

25 MR. SCHAUBLE: Excuse me, Your Honor. Exhibit

1 205, application filed by James A. Kay, Jr. re: Call Signs  
2 WIK983 and WIL468, a four-page exhibit.

3 I ask to be marked for identification as WTB  
4 Exhibit Number 206, Kay's loading record re: Call signs  
5 WIK983 and WIL469, a one-page exhibit.

6 I ask to be marked for identification as WTB  
7 Exhibit Number 207, Kay's available customer records for  
8 customers listed on loading records for call signs WIK983  
9 and WIL469, a two-page exhibit.

10 I ask to be marked for identification as WTB  
11 Exhibit Number 208, an excerpt from the Commission's  
12 database record re: Call Sign WIL260, a four-page exhibit.

13 I ask to be marked for identification as WTB  
14 Exhibit Number 209, Radio Station License re: Call Sign  
15 WIL260, a two-page exhibit.

16 I ask to be marked for identification as WTB  
17 Exhibit Number 210, an application filed by James A. Kay,  
18 Jr. re: Call Sign WIL260, a two-page exhibit.

19 I ask to be marked for identification as WTB  
20 Exhibit Number 211, Kay's loading record re: Call Sign  
21 WIL260, a two-page exhibit.

22 I ask to be marked for identification as WTB  
23 Exhibit Number 212, Kay's available customer records for  
24 customers listed on loading records for call sign WIL260, a  
25 two-page exhibit.

1 I ask to be marked for identification as WTB  
2 Exhibit Number 213, an excerpt from the Commission's  
3 database record re: Call Sign WIL432, a six-page exhibit.

4 I ask to be marked for identification as WTB  
5 Exhibit Number 214, Radio Station License re: Call Sign  
6 WIL432, a three-page exhibit.

7 I ask to be marked for identification as WTB  
8 Exhibit Number 215, an application filed by James A. Kay,  
9 Jr. re: Call Sign WIL432, a two-page exhibit.

10 I ask to be marked for identification as WTB  
11 Exhibit Number 216, Kay's loading record re: Call Sign  
12 WIL432, a one-page exhibit.

13 I ask to be marked for identification as WTB  
14 Exhibit Number 217, Kay's available customer records for  
15 customers listed on the loading record for call sign WIL432,  
16 a one-page exhibit.

17 I ask to be marked for identification as WTB  
18 Exhibit Number 218, an excerpt from the Commission's  
19 database record re: Call Sign WIL436, a four-page exhibit.

20 I ask to be marked for identification as WTB  
21 Exhibit Number 219, a Radio Station License for Call Sign  
22 WIL436, a two-page exhibit.

23 I ask to be marked for identification as WTB  
24 Exhibit Number 220, an application filed by James A. Kay,  
25 Jr. re: Call Sign WIL436, a two-page exhibit.

1 I ask to be marked for identification as WTB  
2 Exhibit Number 221, Kay's loading record re: Call Sign  
3 WIL436, a one-page exhibit.

4 I ask to be marked for identification as WTB  
5 Exhibit Number 222, Kay's available customer records for  
6 customers listed on the loading records for WIL436, a one-  
7 page exhibit.

8 I ask to be marked for identification as WTB  
9 Exhibit Number 223, excerpt from Commission database record  
10 re: Call Sign WIL458, a four-page exhibit.

11 I ask to be marked for identification as WTB  
12 Exhibit Number 224, Radio Station License re: Call Sign  
13 WIL458, a two-page exhibit.

14 I ask to be marked for identification as WTB  
15 Exhibit Number 225, an application filed by James A. Kay,  
16 Jr. re: Call Sign WIL458, a two-page exhibit.

17 MR. SCHAUBLE: Your Honor, could we go off the  
18 record for just one second?

19 CHIEF JUDGE CHACKIN: Yes. Let's go off the  
20 record.

21 MR. SCHAUBLE: Mr. Knowles-Kellett will be  
22 identifying the exhibits for awhile here.

23 CHIEF JUDGE CHACKIN: 226.

24 MR. KNOWLES-KELLETT: I ask that Exhibit 226 be  
25 identified. This is case loading record re: Call Sign

1 WIL458, a one-page exhibit.

2 Exhibit 227, I ask that it be identified as Kay's  
3 available customer records for customers listed on loading  
4 records for call sign WIL458, a four-page exhibit.

5 I ask that Exhibit 228 -- this the Bureau's  
6 exhibit excerpt from Commission database record re: Call  
7 Sign WIL462, a five-page exhibit.

8 I ask that WTB Exhibit 229 be identified, Radio  
9 Station License Call Sign WIL462, a two-page exhibit.

10 And I ask that WTB Exhibit 230 be identified.  
11 It's an application filed by James A. Kay, Jr. re: Call  
12 Sign WIL462, a two-page exhibit.

13 I ask that WTB Exhibit 231 be identified. It's  
14 Kay's loading record re Call Sign WIL462, a two-page  
15 exhibit.

16 I ask that WTB Exhibit 232 be identified. It's  
17 Kay's available customer records for customers listed on  
18 loading records for call sign WIL462, a two-page exhibit.

19 I ask that Exhibit 233 be identified. It's an  
20 excerpt from the Commission database record re: Call Sign  
21 WIL522. It's an eight-page exhibit.

22 I ask that Exhibit 234 be identified. It's Radio  
23 Station License Call Sign WIL522, a five-page exhibit.

24 I ask that Exhibit 235 be identified. It's an  
25 application filed by James A. Kay, Jr. re: Call Sign

1 WIL522, a two-page exhibit.

2 I ask that 236 be identified. It's Kay's loading  
3 record re: Call Sign WIL522, a four-page exhibit.

4 I ask that WTB Exhibit 237 be identified. It's  
5 Kay's available customer records for customers listed on  
6 loading records for Call Sign WIL522. That's an eight-page  
7 exhibit.

8 I ask that WTB Exhibit 238 be identified. That's  
9 an excerpt from the Commission's database record re: Call  
10 Sign WNMT755, a four-page exhibit.

11 I ask that Exhibit 239 be identified. It's Kay's  
12 loading record re: Call Sign WNMT755. That's a one-page  
13 exhibit.

14 I ask that WTB Exhibit 240 be marked and  
15 identified. That's Kay's available customer records for  
16 customers listed on loading records for call sign WNMT755.  
17 And that's a five-page exhibit.

18 I ask that WTB Exhibit 241 be marked and  
19 identified. That's an excerpt from the Commission database  
20 record re: Call Sign WNQK532. That's a four-page exhibit.

21 I ask that WTB Exhibit 242 be marked and  
22 identified. That's Kay's loading record re: Call Sign  
23 WNKQ532, a one-page exhibit.

24 I ask that WTB Exhibit 243 be marked and  
25 identified, Kay's available customer records for customers

1 listed on loading records for call sign WNQK532. That's a  
2 two-page exhibit.

3 I ask that WTB Exhibit 244 be identified, excerpt  
4 from Commission database record re: Call Sign WNXC713.  
5 That's a four-page exhibit.

6 I ask that WTB Exhibit 245 be marked and  
7 identified, Kay's loading record re: Call Sign WNXC713, a  
8 two-page exhibit.

9 I ask that WTB Exhibit 246 be marked and  
10 identified, Kay's available customer records for customers  
11 listed on loading records for call sign WNXC713. It's a 11-  
12 page exhibit.

13 I ask that WTB Exhibit 247 be marked and  
14 identified. That's excerpt from Commission database records  
15 re: Call Sign WNXW549, a four-page exhibit.

16 I ask that WTB Exhibit 248 be marked and  
17 identified, Kay's loading record re: Call Sign WNXW549, a  
18 one-page exhibit.

19 I ask that WTB Exhibit 249 be marked and  
20 identified. It's Kay's available customer records for  
21 customers listed on loading records for call sign WNXW549.  
22 And that's a 15-page exhibit.

23 CHIEF JUDGE CHACKIN: The documents described by  
24 Counsel will be marked for identification as Bureau Exhibits  
25 190 through 249.

1 (The documents referred to  
2 were marked for identification  
3 as Bureau Exhibits 190 through  
4 249.)

5 MR. KNOWLES-KELLETT: Okay. I ask that WTB  
6 Exhibit 250, excerpt from Commission database record re:  
7 Call Sign WNYR747 be marked and identified. It's a four-  
8 page exhibit.

9 I ask that WTB Exhibit 251, Kay's loading record  
10 re: Call Sign WNYR747 be marked and identified. It's a  
11 one-page exhibit.

12 I ask that WTB Exhibit 252, Kay's available  
13 customer records for customers listed on loading records for  
14 call sign WNYR747 be marked and identified. It's a seven-  
15 page exhibit.

16 I ask that WTB Exhibit 253, exhibit from  
17 Commission database record re: Call Sign WNVL447 be marked  
18 and identified. It's a four-page exhibit.

19 I ask WTB 254, Kay's loading record re: Call Sign  
20 WNZL447 be marked and identified. It's a one-page exhibit.

21 I ask that WTB Exhibit 255, Kay's available  
22 customer records for the customers listed on loading records  
23 for call sign WNZL447 be marked and identified. It's a one-  
24 page exhibit.

25 I ask that WTB Exhibit 256, excerpt from



1 Commission database record re: Call Sign WPAP683 be marked  
2 and identified. It's a four-page exhibit.

3 I ask that WTB Exhibit 257, Kay's loading record  
4 re: Call Sign WPAP683 be marked and identified. It's a two-  
5 page exhibit.

6 I would like to go back. WTB Exhibit 255 was a  
7 four-page exhibit, Your Honor. And I apologize for the  
8 error.

9 CHIEF JUDGE CHACKIN: All right.

10 MR. KNOWLES-KELLETT: WTB Exhibit 258, Kay's  
11 available customer records for customers listed on loading  
12 records for call sign WPAP683, I ask that it be marked and  
13 identified. It's a five-page exhibit.

14 I ask that WTB 259, excerpt from Commission  
15 database record re: Call Sign WPBR746 be marked and  
16 identified. It's a six-page exhibit.

17 I ask that WTB Exhibit 260, Radio Station License  
18 Call Sign WPBR746 be marked and identified. It's a two-page  
19 exhibit.

20 I ask that WTB Exhibit 261, application filed by  
21 James A. Kay, Jr. re: Call Sign WPBR746 be marked and  
22 identified. It's a two-page exhibit.

23 I ask that WTB Exhibit 262, Kay's loading record  
24 re: Call Sign WPBR746 be marked and identified. It's a  
25 two-page exhibit.

1 I ask that WTB Exhibit 263, Kay's available  
2 customer records for customers listed on loading records for  
3 call sign WPBR746 be marked and identified. That's a one-  
4 page exhibit.

5 I ask that WTB Exhibit 264, excerpt from  
6 Commission database record re: Call Sign WPBX246 be marked  
7 and identified. It's a five-page exhibit.

8 I ask that that WTB Exhibit 265, Kay's loading  
9 record re: Call Sign WPBX246 be marked and identified.  
10 It's a one-page exhibit.

11 I ask that WTB Exhibit 266, Kay's available  
12 customer records for customers listed on loading records for  
13 Call Sign WPBX246 be marked and identified. It's a three-  
14 page exhibit.

15 I ask that WTB Exhibit 267, excerpt from  
16 Commission database record re: Call Sign WPBX247 be marked  
17 and identified. It's a four-page exhibit.

18 I ask that WTB Exhibit 268, Kay's loading record  
19 re: call sign WPBX247 be marked and identified. It's a  
20 one-page exhibit.

21 I ask that WTB Exhibit 269, Kay's available  
22 customer records for customers listed on loading records for  
23 call sign WPBX247 be marked and identified. It's a one-page  
24 exhibit.

25 I ask that WTB 270, excerpt from Commission

1 database record re: Call Sign WPBZ518 be marked and  
2 identified. It's a four-page exhibit.

3 I ask that WTB Exhibit 271, Kay's loading record  
4 re: Call Sign WPBZ518 be marked and identified. It's a  
5 one-page exhibit.

6 I ask that WTB Exhibit 272, Kay's available  
7 customer records for customers listed on loading records for  
8 call sign WPBZ518 be marked and identified. It's a four-  
9 page exhibit.

10 I ask that WTB Exhibit 273, excerpt from  
11 Commission database record re: Call Sign WPEE253 be marked  
12 and identified. It's a four-page exhibit.

13 I ask that WTB Exhibit 274, Radio Station License  
14 Call Sign WPEE 253 be marked and identified. It's a two-  
15 page exhibit.

16 I ask that WTB Exhibit 275, application filed by  
17 James A. Kay, Jr. re: Call Sign WPEE253 be marked and  
18 identified. It's a two-page exhibit.

19 I ask that WTB Exhibit 276, Kay's loading record  
20 re: Call Sign WPEE253 be marked and identified. It's a  
21 two-page exhibit.

22 I ask that WTB Exhibit 277, Kay's available  
23 customer records for customers listed on loading records for  
24 Call Sign WPEE253 be marked and identified. It's a two-page  
25 exhibit.

1 I ask that WTB Exhibit 278, excerpt from  
2 Commission database record re: Call Sign WQP957 be marked  
3 and identified. It's a four-page exhibit.

4 I ask that WTB Exhibit 279, Kay's loading record  
5 re: Call Sign WQP957 be marked and identified. It's a one-  
6 page exhibit.

7 I ask that WTB Exhibit 280, Kay's available  
8 customer records for customers listed on loading records for  
9 Call Sign WQP957 be marked and identified. It's a two-page  
10 exhibit.

11 I ask that WTB Exhibit 281, Kay database records  
12 produced by Vincent Cordaro entitled, "Cust01.dbf." It's a  
13 154-page exhibit, be marked and identified.

14 I ask that WTB Exhibit 282, Kay database records  
15 produced by Vincent Cordaro, "Cust02.dbf" be marked and  
16 identified. It's a 12-page exhibit.

17 I ask that WTB Exhibit 283, Kay database records  
18 produced by Vincent Cordaro, "Cust03.dbf" be marked and  
19 identified. It's a 12-page exhibit.

20 I ask that WTB 284, Kay database records produced  
21 by Vincent Cordaro, "Cust04.dbf" be marked and identified.  
22 It's a 12-page exhibit.

23 I ask that WTB Exhibit 285, Kay database records  
24 produced by Vincent Cordaro, "Cust05.dfb" be marked and  
25 identified. It's a 12-page exhibit.

1 I ask that WTB Exhibit 286, a letter dated June  
2 17, 1992 from James A. Kay, Jr. to B & S Pallets concerning  
3 Kay's rates be marked and identified. It's a one-page  
4 exhibit.

5 I ask that WTB Exhibit 287, a letter dated  
6 September 6, 1994 from Michael Ketelsleger,  
7 K-E-T-E-L-S-L-E-G-E-R to Jim Kay, Jr. with handwritten note  
8 regarding response be marked and identified. It's a one-  
9 page document.

10 CHIEF JUDGE CHACKIN: The documents described will  
11 be marked for identification as Bureau Exhibits 250 to 287.

12 (The documents referred to  
13 were marked for identification  
14 as Exhibits 250 to 287.)

15 MR. KNOWLES-KELLETT: I ask that WTB Exhibit 288,  
16 summary chart re: Forest Service Permits be marked and  
17 identified. Oh. And Your Honor, I would note on this one,  
18 that this is another one of the compendiums that we're not  
19 going to move into evidence.

20 CHIEF JUDGE CHACKIN: All right. 288 will not be  
21 offered. All right.

22 MR. KNOWLES-KELLETT: I ask that WTB Exhibit 289,  
23 Forest Service Permits produced by James A. Kay, Jr. be  
24 marked and identified. This is a 369-page exhibit.

25 I ask that WTB Exhibit --

1 CHIEF JUDGE CHACKIN: Wait. Before we go on, the  
2 two documents that will be marked for identification is  
3 Bureau Exhibits 288 and 289 with the understanding that  
4 Bureau Exhibit 288 is not being offered.

5 MR. KNOWLES-KELLETT: We're marking it and  
6 identifying it solely for purposes of producing --  
7 conserving the numbering.

8 CHIEF JUDGE CHACKIN: I understand.

9 MR. KNOWLES-KELLETT: I ask that WTB Exhibit 290,  
10 Amended Responses to Wireless Telecommunications Bureau's  
11 First Set of Interrogatories be marked and identified. It's  
12 a 23-page exhibit.

13 I ask that WTB Exhibit 291, Summary of Results of  
14 Inspection Report of Stations Licensed to James A. Kay, Jr.  
15 Conducted by the Compliance and Information Bureau of the  
16 Federal Communications Commission be marked and identified.  
17 It's a 22-page document.

18 I ask that WTB Exhibit 292, 16 customer records of  
19 James A. Kay, Jr. be marked and identified. It's a 16-page  
20 exhibit.

21 I would ask that WTB Exhibit 293, invoices  
22 reflecting purchases of repeater equipment by James A. Kay,  
23 Jr. in 1994 be marked and identified. It's a five-page  
24 exhibit.

25 I ask that WTB Exhibit 294, NABER Frequency

1 Coordination Supplement filed on behalf of Carla Pfeifer --  
2 that's P-F-E-I-F-E-R, dated August 30, 1989 be marked and  
3 identified. It's a one-page exhibit.

4 I ask that WTB Exhibit 295 be marked and  
5 identified. It's NABER Frequency Coordination Supplement  
6 filed on behalf of Carla Pfeifer. It's also a one-page  
7 exhibit.

8 I ask that WTB Exhibit 296, NABER Frequency  
9 Coordination Supplement filed on behalf of Carla Pfeifer  
10 dated August 28, 1986 and a check be marked and identified.  
11 It's a one-page exhibit. It's just a copy of a check.

12 I ask that WTB Exhibit 297, letter dated August  
13 19, 1988 from Carla Pfeifer to W. Riley Hollingsworth be  
14 marked and identified. It's a one-page exhibit.

15 I ask that WTB Exhibit 298, a letter dated August  
16 3, 1987 from Carla Pfeifer to the FCC be marked and  
17 identified. It's a one-page exhibit.

18 I ask that WTB Exhibit 299, a letter dated August  
19 31, 1987 from Carla Pfeifer to W. Riley Hollingsworth be  
20 marked and identified. It's a one-page exhibit.

21 I ask that WTB Exhibit 300, lease agreement  
22 between -- dated June 1987 between Carla Pfeifer and James  
23 A. Jay be marked and identified. It's a one-page exhibit.

24 I ask that WTB Exhibit 301, invoice of Buddy Sales  
25 addressed to Carla Pfeifer dated May 29, 1987 be marked and

1 identified. It's a one-page exhibit.

2 I ask that WTB Exhibit 302, a check of David  
3 Pfeifer and Carla Pfeifer made payable to Buddy Sales dated  
4 August 28, 1987 be marked and identified. It's a one-page  
5 exhibit.

6 I ask that WTB Exhibit 303, NABER Frequency  
7 Coordination Supplement filed on behalf of Carla Pfeifer,  
8 dated October 29, 1987 be marked and identified. It's a  
9 one-page exhibit.

10 I ask that WTB Exhibit 304, a letter dated August  
11 4, 1987 from Carla Pfeifer to the FCC be marked and  
12 identified. It's a one-page exhibit.

13 I ask that WTB Exhibit 305, Radio Station License  
14 WNHD783 be marked and identified. It's a one-page exhibit.

15 I ask that WTB Exhibit 306, application filed in  
16 the name of Roy Jensen d/b/a Consolidated Financial Holdings  
17 be marked and identified. It's a three-page exhibit.

18 I ask that WTB Exhibit 307, Radio Station License  
19 WNUG662 be marked and identified. It's a one-page exhibit.

20 I ask that WTB Exhibit 308, a Radio Station  
21 License for WNXV559 be marked and identified. It's a one-  
22 page exhibit.

23 I ask that WTB Exhibit 309, Radio Station License  
24 WNNE920 be marked and identified. It's a one-page exhibit.

25 I ask that WTB Exhibit 310, commission loading



1 cards for Station WNXS450 and WNYR747 licensed to James A.  
2 Kay, Jr. be marked and identified. That's a two-page  
3 exhibit.

4 I ask that WTB Exhibit 311, a letter dated June  
5 11, 1992 from James A. Kay, Jr. to the FCC with attached  
6 application be marked and identified. It's a three-page  
7 exhibit.

8 I ask that WTB Exhibit 312, a fax cover sheet from  
9 Jonathan Lunenfeld, L-U-N-E-N-F-E-L-D at NABER, to James A.  
10 Kay, Jr. dated July 14, 1992, with attached application  
11 signed by Vincent Cordaro be marked and identified. That's  
12 a three-page exhibit.

13 I ask that WTB Exhibit 313, Radio Station License  
14 WNXM915 be marked and identified. It's a one-page exhibit.

15 I ask that WTB Exhibit 314, draft letter dated  
16 September \*\*, 1992 from Dennis C. Brown, Esq. to Ralph A.  
17 Haller, Chief, Private Radio Bureau be marked and  
18 identified. That's a four-page exhibit.

19 I ask that WTB Exhibit 315, letter dated September  
20 4, 1992 from Vince Cordaro to the FCC be marked and  
21 identified. That's a two-page exhibit.

22 I ask that WTB Exhibit 316, Radio Station License  
23 WPBB695 be marked and identified. That's a one-page  
24 exhibit.

25 I ask that WTB Exhibit 317, Radio Station License

1 WNPY680 issued September 30, 1992 be marked and identified.  
2 That's a one-page exhibit.

3 I ask that WTB Exhibit 318, Radio Station License  
4 WNPY680, issued May 11, 1993 be marked and identified. It's  
5 a two-page exhibit.

6 I ask that WTB Exhibit 319, undated note entitled,  
7 "Vince Licenses" be marked and identified. That's a one-  
8 page exhibit.

9 I ask that WTB Exhibit 320, a letter dated August  
10 25, 1993 from Dennis C. Brown, Esq. to the Federal  
11 Communications Commission be marked and identified. That's  
12 a one-page exhibit.

13 I ask that WTB Exhibit 321, Application to assign  
14 License WNXR890 to James A. Kay, Jr. and to Modify License,  
15 signed by James A. Kay, Jr. April 24, 1994 be marked and  
16 identified. That's a five-page exhibit.

17 I ask that WTB Exhibit 322, Radio System  
18 Management and Marketing Agreement between James A. Kay, Jr.  
19 and Vince Cordaro dated November 11, 1994 be marked and  
20 identified. That's a nine-page exhibit.

21 I ask that WTB Exhibit 323, a Radio System  
22 Management and Marketing Agreement between James A. Kay, Jr.  
23 and Vince Cordaro dated December 30, 1994 be marked and  
24 identified. It's a nine-page exhibit.

25 I ask that WTB Exhibit 324, a check of James A.

1 Kay, Jr. made payable to Vince Cordaro, issued December 30,  
2 1994 be marked and identified. That's a one-page exhibit.

3 I ask that WTB Exhibit 325, a letter dated April  
4 14, 1995 from Vincent S. Cordaro to Mr. Terry Fishel be  
5 marked and identified. That's a one-page exhibit.

6 I ask that WTB Exhibit 326, Radio System  
7 Management and Marketing Agreement between James A. Kay, Jr.  
8 and Jerry Gales dated November 2, 1994 be marked and  
9 identified. It's a nine-page exhibit.

10 I ask that WTB Exhibit 327, that's the initial  
11 decision of Administrative Law Judge John M. Frysiak, In the  
12 Matter of Marc D. Sobel, WT Docket No. 97-56, FCC 97D-13  
13 (released November 28, 1997) be marked and identified.  
14 That's a 25-page exhibit.

15 I ask that WTB Exhibit 328, the hearing transcript  
16 in WT Docket No. 97-56, Volume 2 be marked and identified.  
17 That's a 196-page exhibit.

18 I ask that WTB Exhibit --

19 CHIEF JUDGE CHACKIN: Wait a minute. The  
20 documents described will be marked for identification as  
21 Bureau Exhibits 290 through 328.

22 (The documents referred to  
23 were marked for identification  
24 as Bureau Exhibits 290 through  
25 328.)

1           MR. KNOWLES-KELLETT: Thank you, Your Honor. I  
2 ask that WTB Exhibit 329, hearing transcript in WT Docket  
3 No. 97-56, Volume 3 be marked and identified. That's a 170-  
4 page exhibit.

5           We ask that WTB Exhibit 330, Orders in WT Docket  
6 No. 97-56 Correcting Hearing Transcript, be marked and  
7 identified. That's a five-page document.

8           I ask that WTB Exhibit 331, applications for SMR  
9 licenses filed in the name of Marc Sobel be marked and  
10 identified. It's a 30-page exhibit.

11           I ask that WTB Exhibit 322, letter dated March 18,  
12 1993 from Marc Sobel to the Federal Communications  
13 Commission be marked and identified. That's a seven-page  
14 exhibit.

15           I ask that WTB Exhibit 333, unredacted copies of  
16 invoices submitted to Commission in redacted form with WTB  
17 Exhibit 332 be marked and identified. That's a three-page  
18 exhibit.

19           I ask that WTB Exhibit 334, an undated letter  
20 (Bates Stamp Numbering start with 142) from Marc Sobel to  
21 the FCC be marked and identified. It's a seven-page  
22 exhibit.

23           I ask that WTB Exhibit 335, unredacted copies of  
24 invoices submitted to the Commission in redacted form with  
25 WTB Exhibit 334 be marked and identified. And that's a

1 three-page exhibit.

2 I ask that WTB Exhibit 336, an undated letter  
3 (Bates Stamp Numbering start with 280) from Marc Sobel to  
4 the FCC be marked and identified. It's a seven-page  
5 exhibit.

6 I ask that WTB Exhibit 337, unredacted copies of  
7 invoices submitted to the Commission in redacted form with  
8 the previous exhibit, WTB Exhibit 336 be marked and  
9 identified. That's a four-page exhibit.

10 I ask that WTB Exhibit 338, invoices submitted to  
11 Kay by Sobel for work done be marked and identified. That's  
12 an 80-page exhibit.

13 I ask that WTB Exhibit 339, Radio System  
14 Management and Marketing Agreement dated October 28, 1994 be  
15 marked and identified. That's a nine-page exhibit.

16 I'd note that this agreement is between James A.  
17 Kay and Marc Sobel. We have other exhibits with similar  
18 titles.

19 I ask that WTB Exhibit 340, Radio System  
20 Management and Marketing Agreement December 30, 1994 between  
21 Kay and Sobel be marked and identified. That's a nine-page  
22 exhibit.

23 I ask that WTB Exhibit 341, Addendum and Amendment  
24 to Radio System Management and Marketing Agreement dated  
25 September 30, 1994 be marked and identified. That's a one-

1 page exhibit.

2 I ask that WTB Exhibit 342, Motion to Enlarge  
3 Change or Delete Issues, submitted in WT Docket No. 94-147  
4 by James A. Kay on January 12, 1995 be marked and  
5 identified. That's a 26 page exhibit.

6 I ask that WTB Exhibit 343, Motion to Enlarge  
7 Change or Delete Issues submitted in WT Docket No. 94-147 by  
8 James A. Kay, Jr. on January 25, 1995 be marked and  
9 identified. That's a 23-page exhibit.

10 I ask that WTB Exhibit 344, Agreement to Purchase  
11 Assets of Airwave Communications dated January 25, 1995 be  
12 marked and identified. That's a seven-page exhibit.

13 I ask that WTB Exhibit 345, excerpt from  
14 Commission Database record re: Call Sign WIL663 be marked  
15 and identified. That's a five-page exhibit.

16 CHIEF JUDGE CHACKIN: The documents described will  
17 be marked for identification as Bureau Exhibits 329 through  
18 345.

19 (The documents referred to  
20 were marked for identification  
21 as Bureau Exhibits 329 through  
22 345.)

23 CHIEF JUDGE CHACKIN: We'll take a 10 minute break  
24 before we begin any other exhibits.

25 (Whereupon, a short break was taken.)

1 CHIEF JUDGE CHACKIN: Mr. Schauble?

2 MR. SCHAUBLE: Your Honor, shall I ask that the  
3 exhibits be admitted into evidence one at a time?

4 CHIEF JUDGE CHACKIN: We'll do it one at a time.

5 MR. SCHAUBLE: Okay. Your Honor, at this time I  
6 move WTB Exhibit Number 1 into evidence.

7 CHIEF JUDGE CHACKIN: Any objections?

8 MR. SHAINIS: Your Honor, I would have no  
9 objection providing that Mr. Schauble tell me who the  
10 sponsoring witness this exhibit is.

11 MR. SCHAUBLE: Your Honor, as we stated in our  
12 index to the exhibit, Mr. Kay is the sponsoring witness of  
13 the exhibit. This is the original letter of inquiry that  
14 was sent to him, and it's being offered for the purpose of  
15 notice of what was being required of Mr. Kay. In his  
16 Request for Admissions, he admitted the genuineness of this  
17 document.

18 MR. SHAINIS: Well, Your Honor, if the document is  
19 going to be used for the truth of the matter asserted in the  
20 document, Mr. Kay is not the author of the document, so I  
21 would object to the document unless Mr. Hollingsworth will  
22 be produced or whoever has the initials AMW, who I presume  
23 drafted the document for Mr. Hollingsworth's signature.

24 CHIEF JUDGE CHACKIN: Let's find out. Is the  
25 document being offered for the truth, or is the document

1     being offered as to a letter that was sent to Mr. Kay? If  
2     you're offering it for the truth, obviously, only Mr.  
3     Hollingsworth could testify as to the matter within there.

4             MR. SCHAUBLE: The latter, Your Honor.

5             CHIEF JUDGE CHACKIN: Well, if it's the latter,  
6     then there's no problem. It's the letter which was sent to  
7     Mr. Kay. It's not being offered for the truth.

8             Any objection on that basis, Mr. Shainis?

9             MR. SHAINIS: No objection. Just I would like to  
10    put the Bureau on notice that I may want Mr. Hollingsworth  
11    for cross-examination on all the letters that he signed.

12            CHIEF JUDGE CHACKIN: Well, since the document is  
13    not being offered for truth, there's no purpose for Mr.  
14    Hollingsworth to appear. If you want to call him as a --  
15    well, we'll have to see what the other letters are.

16            But let me say this. If all the letters are being  
17    offered just as letters which were sent to Mr. Kay and for  
18    nothing more, and not being offered for the truth of the  
19    matters contained therein, then there's no basis to cross-  
20    examine Mr. Hollingsworth.

21            If, however, any of this material is being offered  
22    for the truth of the matters contained in Mr.  
23    Hollingsworth's statements, namely, that these are facts  
24    establishing Kay's wrongdoing, then of course, you would  
25    have the right to cross-examine Mr. Hollingsworth.



1           So, we'll have to find out for what purposes these  
2       letters are being used.

3           MR. SHAINIS: Your Honor, but I believe you hit  
4       the nail on the head. And I think the Bureau would have to  
5       admit that they're going to be used for facts established  
6       the alleged wrongdoing by Mr. Kay.

7           CHIEF JUDGE CHACKIN: Well, they're being used  
8       just as allegations made against Mr. Kay and nothing more.

9           MR. SCHAUBLE: Your Honor, we are not going to use  
10      the 308(b) letters as -- in an attempt to prove substantive  
11      allegations that Kay inflated his loading or anything.  
12      That's not the purpose. The purpose is -- these were  
13      letters of inquiry. These set the factual predicate.

14          CHIEF JUDGE CHACKIN: And which Kay responded to.  
15      So, that's all they're being used for. They're not being  
16      used for the truth of the matters therein. So, it would be  
17      inappropriate if there was an attempt to use it for that  
18      purpose, I might add. There'd be no proof. They're just  
19      merely letters of inquiry. That's all they're being used  
20      for.

21          MR. SHAINIS: Your Honor, there is a 308(b) issue  
22      which you're aware of.

23          CHIEF JUDGE CHACKIN: I am aware of that.

24          MR. SHAINIS: The substance of the issue deals  
25      with these letters.

1 CHIEF JUDGE CHACKIN: But I assume that it deals  
2 with the responses of Mr. Kay to these letters.

3 MR. SHAINIS: But the letters form the factual  
4 basis for their response or as the Bureau would like to say,  
5 the lack of response by Mr. Kay to the letters. I don't  
6 think you can divorce one from the other.

7 CHIEF JUDGE CHACKIN: Well, I'll just have to see  
8 how the Bureau intends to use these letters. The way I see  
9 it, these are a letter of inquiry to Mr. Kay -- well, as far  
10 as the first one, the Bureau has stated it's only using this  
11 as a letter of inquiry to Mr. Kay. It's not offering it for  
12 the truth of the matters contained herein. On that basis I  
13 will receive Bureau Exhibit 1.

14 (The document referred to,  
15 having been previously marked  
16 for identification as Bureau  
17 Exhibit 1, was received in  
18 evidence.)

19 MR. SCHAUBLE: Your Honor, at this time I move WTB  
20 Exhibit Number 2 into evidence.

21 CHIEF JUDGE CHACKIN: Exhibit 2 is what? That is  
22 the response by the law firm, Dennis C. Brown?

23 MR. SCHAUBLE: Correct, Your Honor.

24 CHIEF JUDGE CHACKIN: Mr. Hollingsworth?

25 MR. SCHAUBLE: There are two letters dated April

1 7, 1994 from the law firm to the FCC. Those are Exhibits 2  
2 and 3.

3 CHIEF JUDGE CHACKIN: Any objections to these  
4 documents?

5 MR. SHAINIS: Your Honor, I would like to take  
6 them seriatim if I might.

7 CHIEF JUDGE CHACKIN: All right. Let's take  
8 Exhibit 2 then.

9 MR. SHAINIS: Exhibit 2 -- Your Honor, again,  
10 there's no sponsoring witness of this. Mr. Kay did not  
11 draft the letter. So, if the Bureau is -- I don't know how  
12 Mr. Kay can be the sponsoring witness the way the Bureau  
13 perceives --

14 CHIEF JUDGE CHACKIN: The Bureau has to put in  
15 their case.

16 MR. SCHAUBLE: Your Honor, Mr. Kay admitted that  
17 this letter was sent on his behalf.

18 CHIEF JUDGE CHACKIN: Well, if he did, then it's  
19 in evidence. If he didn't, then we just have a letter and  
20 we just have to -- we'll just have to wait and see. The  
21 Bureau has to prove their case.

22 I agree with you this is just a letter from  
23 counsel, and unless the Bureau proves some connection  
24 between counsel and Mr. Kay, that Mr. Kay was apprised of  
25 this letter and knew the contents and agreed to it, that's

1 up to the Bureau to prove. Right now all we have is a  
2 letter from counsel.

3 MR. SHAINIS: That's fine, Your Honor.

4 CHIEF JUDGE CHACKIN: And I'll receive it for that  
5 purpose as a response from counsel. So, Bureau Exhibit 2 is  
6 received.

7 (The document referred to,  
8 having been previously marked  
9 for identification as Bureau  
10 Exhibit 2, was received in  
11 evidence.)

12 MR. SCHAUBLE: Your Honor, at this time I move  
13 Bureau Exhibit 3 into evidence.

14 CHIEF JUDGE CHACKIN: Again, this is another  
15 letter from counsel. And again, the Bureau has to prove  
16 that Mr. Kay approved of this letter or affirmed it in some  
17 way, accepted it. Bureau Exhibit 3 will also be received.

18 (The document referred to,  
19 having been previously marked  
20 for identification as Bureau  
21 Exhibit 3, was received in  
22 evidence.)

23 CHIEF JUDGE CHACKIN: Next exhibit?

24 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit 4  
25 into evidence. Again, this is not being offered -- this is

1 a letter from Mr. Hollingsworth to Mr. Kay. Again, this is  
2 not being offered to prove the truth of the matter asserted,  
3 the letter received by Mr. Kay from the FCC in connection.  
4 And Mr. Kay has previously admitted the genuineness of this  
5 document.

6 CHIEF JUDGE CHACKIN: Any objections?

7 MR. SHAINIS: The same objection as before, Your  
8 Honor.

9 CHIEF JUDGE CHACKIN: All right. Bureau Exhibit 4  
10 is received.

11 (The document referred to,  
12 having been previously marked  
13 for identification as Bureau  
14 Exhibit 4, was received in  
15 evidence.)

16 MR. SCHAUBLE: Your Honor, at this time move  
17 Bureau Exhibit 5 into evidence.

18 CHIEF JUDGE CHACKIN: Again, it's up to the Bureau  
19 to prove that Mr. Kay authorized this letter or somehow  
20 approved of its contents. Any objection?

21 MR. SCHAUBLE: Or an agency would do, wouldn't it?

22 CHIEF JUDGE CHACKIN: Well, you'd have to  
23 establish some sort of agency.

24 MR. SCHAUBLE: If we established in fact, his  
25 attorneys submitting letters on his behalf.

1           MR. SHAINIS: An attorney, by the way Your Honor,  
2 is not an agent. The attorney-client relationship is  
3 different than a principle agent relationship.

4           MR. KNOWLES-KELLETT: For this purpose, it would  
5 be one of agency.

6           MR. SHAINIS: For what purposes?

7           MR. KNOWLES-KELLETT: For purposes of responding  
8 to the FCC inquiries, he was acting on behalf of Kay

9           MR. SHAINIS: As his attorney, but not as his  
10 agent. There is a difference.

11          CHIEF JUDGE CHACKIN: Well, you may have to call -  
12 - it depends on the testimony of Mr. Kay, you may have to  
13 call this lawyer.

14          MR. KNOWLES-KELLETT: Who has admitted that he  
15 sent it on Kay's behalf.

16          CHIEF JUDGE CHACKIN: Well, we'll just have to  
17 wait to see what Kay says about it. He says he's on behalf  
18 of Mr. Kay, but you may have to call this lawyer. I don't  
19 know.

20                 In any event, I will receive Bureau Exhibit 5 as a  
21 letter from Brown and Schwaniger to W. Riley Hollingsworth  
22 and for no other purpose.

23                                 (The document referred to,  
24                                 having been previously marked  
25                                 for identification as Bureau

1                               Exhibit 5, was received in  
2                               evidence.)

3                   MR. SHAINIS: Your Honor, so that the Bureau  
4 doesn't -- I think the Bureau should prepare a subpoena  
5 for -- is it Mr. Brown who signed the letter?

6                   MR. KNOWLES-KELLETT: It is Mr. Brown. He signed  
7 the letter.

8                   MR. SHAINIS: I think they should subpoena Mr.  
9 Brown. But if it's not needed, that's fine, but at least  
10 they'll have the subpoena. They can't then claim if I  
11 prepare the subpoena or surprise.

12                  CHIEF JUDGE CHACKIN: And I assume Mr. Kay will  
13 not object on the grounds of attorney-client privilege?

14                  MR. SHAINIS: I wouldn't make that assumption  
15 either. It depends what the questions are. I mean, he's  
16 clearly --

17                  CHIEF JUDGE CHACKIN: Well, we're talking about  
18 the contents of these letters, whether Mr. Kay authorized  
19 him to --

20                  MR. SHAINIS: Yes. I'm sure Mr. Kay would not  
21 object under grounds of privilege if there's the substance  
22 of any conversations that Mr. Kay had.

23                  CHIEF JUDGE CHACKIN: Oh, I'm not talking about  
24 that. I'm talking about this letter and whether it was  
25 done.

1 MR. SHAINIS: Right.

2 CHIEF JUDGE CHACKIN: Mr. Kay was aware of it and  
3 approved it. Well, we'll see where we go from here, but  
4 you've been put on notice that question has been raised as  
5 to whether Mr. Kay gave his approval of this letter or  
6 contents or was aware of its contents, or whether Mr. Brown  
7 just wrote this letter. Whether he sent a copy to Mr. Kay,  
8 on that we don't know that either I think on the basis of  
9 the letter, do we?

10 MR. SCHAUBLE: Your Honor, I think the underlying  
11 record will establish --

12 MR. SHAINIS: And the other issue, of course, is  
13 when Mr. Kay was aware of the letter. Was it after it was  
14 sent, before it was sent? I mean, that is all relevant.

15 CHIEF JUDGE CHACKIN: I understand. It's up to  
16 the Bureau to establish those facts, whether they had the  
17 prior approval of Mr. Kay, whether Mr. Kay was given a copy  
18 of it before it was sent, whether it ratified it afterwards.  
19 I don't know what the facts are. Apparently -- there's no  
20 indication that a copy of this was sent to Mr. Kay, at least  
21 there's no indication in the letter itself. Mr. Kay is not  
22 cc'd so --

23 MR. SHAINIS: Right. Your Honor, in discovery I  
24 don't believe the Bureau asked those type of questions, as  
25 to when Mr. Kay knew about it.



1 CHIEF JUDGE CHACKIN: Well, presumably, they'll  
2 develop it now that they're aware of what the problems could  
3 be.

4 MR. SCHAUBLE: Your Honor, at this time move WTB  
5 Exhibit Number 6 into evidence. Again, this is not being  
6 offered to prove the truth of the matter asserted, but is  
7 notice of a letter sent from the FCC to Mr. Kay. I believe  
8 in this case, Mr. Kay's counsel.

9 CHIEF JUDGE CHACKIN: Any objection for that  
10 limited purpose?

11 MR. SHAINIS: For that limited purpose, no, Your  
12 Honor.

13 CHIEF JUDGE CHACKIN: All right. Bureau Exhibit 6  
14 is received.

15 (The document referred to,  
16 having been previously marked  
17 for identification as Bureau  
18 Exhibit 6, was received in  
19 evidence.)

20 MR. SCHAUBLE: Your Honor, at this time I move  
21 Bureau Exhibit 7 into evidence.

22 CHIEF JUDGE CHACKIN: And this is another one of  
23 those letters from Mr. Brown to Mr. Hollingsworth?

24 MR. SCHAUBLE: Yes.

25 CHIEF JUDGE CHACKIN: And I will receive it for

1 the limited purpose of being a letter sent from Brown to Mr.  
2 Hollingsworth. And you'll have to establish that Mr. Kay  
3 approved of this letter, ratified it in some respect. And  
4 it may be necessary to call Mr. Brown or perhaps we can do  
5 through Mr. Kay.

6 But right now all it is, is a letter from Mr.  
7 Kay's counsel to Mr. Hollingsworth. And it will be received  
8 for that limited purpose.

9 (The document referred to,  
10 having been previously marked  
11 for identification as Bureau  
12 Exhibit 7, was received in  
13 evidence.)

14 MR. SCHAUBLE: Understood, Your Honor. At this  
15 time, Your Honor, I move Bureau Exhibit 8 into evidence.

16 CHIEF JUDGE CHACKIN: And this is --

17 MR. SCHAUBLE: This is another letter from Mr.  
18 Hollingsworth to --

19 CHIEF JUDGE CHACKIN: All right. Again, this will  
20 be received for the limited purpose of -- constituting a  
21 letter from Mr. Hollingsworth to Mr. Brown, not being  
22 offered for the truth of the matter stated there.

23 //

24 //

25 //

1 (The document referred to,  
2 having been previously marked  
3 for identification as Bureau  
4 Exhibit 8, was received in  
5 evidence.)

6 MR. SCHAUBLE: Your Honor, at this time I move  
7 Bureau Exhibit 9 into evidence.

8 CHIEF JUDGE CHACKIN: And nine is a letter from  
9 Brown again to Mr. Hollingsworth.

10 MR. SCHAUBLE: Dated May 26, 1994.

11 CHIEF JUDGE CHACKIN: Right. And again, the  
12 document will be received for the limited purpose of  
13 constituting the letter from Mr. Brown to Mr. Hollingsworth  
14 without conceding that Mr. Kay approved of the letter or  
15 ratified its contents, but will be received in that limited  
16 purpose.

17 (The document referred to,  
18 having been previously marked  
19 for identification as Exhibit  
20 9, and was received in  
21 evidence.)

22 MR. SCHAUBLE: Your Honor, at this time I move  
23 Bureau Exhibit 10 into evidence.

24 CHIEF JUDGE CHACKIN: And 10 is another letter  
25 from Hollingsworth to Brown. And again, it will be received

1 for the limited purpose between a letter from Hollingsworth  
2 to Brown, and is not being offered for the truth of the  
3 matters therein. It will be received for that limited  
4 purpose.

5 (The document referred to,  
6 having been previously marked  
7 for identification as Bureau  
8 Exhibit 10, was received in  
9 evidence.)

10 MR. SCHAUBLE: Your Honor, at this time I move  
11 Bureau Exhibit 11 into evidence. I would note, Your Honor,  
12 on the last page of the exhibit, there's a declaration from  
13 Mr. Kay affirming that this particular response is true and  
14 correct.

15 CHIEF JUDGE CHACKIN: All right.

16 MR. SCHAUBLE: So, to that extent, we're in a  
17 slightly different position than we were.

18 CHIEF JUDGE CHACKIN: I agree with you.

19 MR. SHAINIS: Are you offering this for the truth  
20 of the matter asserted?

21 MR. KNOWLES-KELLETT: It's a party admission. So,  
22 if we do offer it as such, it comes in as a party admission.

23 CHIEF JUDGE CHACKIN: It's being offered as an  
24 admission by Mr. Kay. Any objection?

25 MR. SHAINIS: Just a moment, Your Honor. No

1 objection.

2 CHIEF JUDGE CHACKIN: All right. Bureau Exhibit  
3 11 is received.

4 (The document referred to,  
5 having been previously marked  
6 for identification as Bureau  
7 Exhibit 11, was received in  
8 evidence.)

9 MR. SCHAUBLE: Your Honor, at this time I move  
10 Bureau Exhibit 12 into evidence. Again, this is another  
11 letter from Mr. Hollingsworth and again, is being offered  
12 for limited purpose.

13 CHIEF JUDGE CHACKIN: All right. It will be  
14 received for the limited purpose indicated before and not  
15 for the truth of the matter stated therein. So, Bureau  
16 Exhibit 12 is received.

17 (The document referred to,  
18 having been previously marked  
19 for identification as Bureau  
20 Exhibit 12, was received in  
21 evidence.)

22 MR. SCHAUBLE: Your Honor, at this time we move  
23 Bureau Exhibit 13 into evidence.

24 CHIEF JUDGE CHACKIN: Again, this is being offered  
25 -- I assume this has not been -- we don't have a --

1 MR. SCHAUBLE: Correct, Your Honor. We do not.

2 CHIEF JUDGE CHACKIN: All right. The exhibit will  
3 be received for the limited purpose of showing a letter sent  
4 by Mr. Brown to Mr. Hollingsworth. So, Bureau Exhibit is  
5 received.

6 (The document referred to,  
7 having been previously marked  
8 for identification as Bureau  
9 Exhibit 13, was received in  
10 evidence.)

11 MR. SCHAUBLE: Okay. Your Honor, at this time, I  
12 move Bureau Exhibit 14 into evidence. This is another  
13 letter from Mr. Hollingsworth and consistent with our prior  
14 representations is being offered for a limited purpose.

15 CHIEF JUDGE CHACKIN: All right. The document  
16 will be received.

17 (The document referred to,  
18 having been previously marked  
19 for identification as Bureau  
20 Exhibit 14, was received in  
21 evidence.)

22 MR. SCHAUBLE: Your Honor, at this time I move  
23 Bureau Exhibit 15 into evidence. And I would note on page 4  
24 that this response also contains a declaration from Mr. Kay.

25 CHIEF JUDGE CHACKIN: So, is this being offered as

1 an admission?

2 MR. SCHAUBLE: Yes, Your Honor.

3 CHIEF JUDGE CHACKIN: Any objection?

4 MR. SHAINIS: No, Your Honor.

5 CHIEF JUDGE CHACKIN: Bureau Exhibit 15 is  
6 received.

7 (The document referred to,  
8 having been previously marked  
9 for identification as Bureau  
10 Exhibit 15, was received in  
11 evidence.)

12 MR. SCHAUBLE: Your Honor, at this time I move  
13 Bureau Exhibit 16 into evidence. I would note while this is  
14 a pleading, it also contains an affidavit from Mr. Kay  
15 stating that the matters contained in the pleading are true  
16 and correct, and is being offered as an admission by Mr.  
17 Kay.

18 CHIEF JUDGE CHACKIN: Any objections?

19 MR. SHAINIS: Your Honor, I'd like to know -- I  
20 don't think the whole point of this pleading is being -- is  
21 going to be used by the Bureau. Rather than burden the  
22 record with a whole pleading, can the Bureau tell us what  
23 parts of this pleading they intend to rely on?

24 CHIEF JUDGE CHACKIN: That's a fair request.

25 MR. SCHAUBLE: Your Honor, there are certain

1 representations made in here and particularly, on page 3 of  
2 the pleading, concerning -- pages 2 and 3, concerning what  
3 records Mr. Kay has and what efforts he would have to make  
4 in order to respond to the Bureau's discovery request.  
5 That's the primary portion of the pleading that the Bureau  
6 intends to rely.

7 MR. KNOWLES-KELLETT: However, Your Honor, it's  
8 only a two and a half page document, so it's not like some  
9 sort of a big surprise.

10 MR. SCHAUBLE: The Bureau, Your Honor, was  
11 hesitant to redact documents, particularly --

12 CHIEF JUDGE CHACKIN: Well, there's no problem  
13 with that. It's just that Counsel has a right to know if  
14 you intend to -- what portions of the document you intend to  
15 rely on in order to be prepared. And you've indicated --  
16 what is it? What portion? You indicated that you intend to  
17 rely on the materials on page 2 --

18 MR. SCHAUBLE: The paragraph starting on the  
19 bottom of page 1 going over to page 2, the one full  
20 paragraph on page 2 and the paragraph on page 3, but not  
21 including the rather long footnote 2.

22 CHIEF JUDGE CHACKIN: All right. Any objection?

23 MR. SHAINIS: No.

24 CHIEF JUDGE CHACKIN: No objection has been  
25 stated, so the exhibit will be received.



1 (The document referred to,  
2 having been previously marked  
3 for identification as Bureau  
4 Exhibit 16, was received in  
5 evidence.)

6 CHIEF JUDGE CHACKIN: Seventeen now?

7 MR. SCHAUBLE: Your Honor, at this time I move  
8 Bureau Exhibit 17 into evidence.

9 CHIEF JUDGE CHACKIN: And that's a declaration of  
10 Mr. Kay. Any objections?

11 MR. SHAINIS: No objection.

12 CHIEF JUDGE CHACKIN: Bureau Exhibit 17 is  
13 received.

14 (The document referred to,  
15 having been previously marked  
16 for identification as Bureau  
17 Exhibit 17, was received in  
18 evidence.)

19 MR. SCHAUBLE: Your Honor, the Bureau will not be  
20 offering what was marked for identification as Bureau  
21 Exhibit 18.

22 CHIEF JUDGE CHACKIN: All right. Bureau Exhibit  
23 18 is not offered.

24 MR. SHAINIS: And Your Honor, I'm assuming also  
25 the Bureau does not intend to use this for cross-examination

1 purposes. Is that correct?

2 MR. SCHAUBLE: That would be correct.

3 MR. SHAINIS: Okay. Thank you.

4 MR. KNOWLES-KELLETT: To the extent we were to  
5 refer to this at all, Your Honor, all the underlying records  
6 in this compendium have been produced here. And it may be  
7 facilitate things to refer to it from time to time. We're  
8 not going to present evidence as to its accuracy. We intend  
9 to rely on the underlying records.

10 CHIEF JUDGE CHACKIN: Well, I don't quite  
11 understand what that means, but we'll have to wait and see.

12 MR. SHAINIS: Neither do I.

13 CHIEF JUDGE CHACKIN: We will have to wait and see  
14 how you attempt to use it. But the difficulty was, if you  
15 attempt to use it, the problem was establishing its  
16 authenticity.

17 MR. KNOWLES-KELLETT: This is in the nature of  
18 more of an index, Your Honor, to other documents.

19 CHIEF JUDGE CHACKIN: Well, I don't know how you  
20 intend to use this, so I don't have to rule at this time.

21 MR. KNOWLES-KELLETT: Okay. It may be that we  
22 will not in light of Mr. Shainis's well taken objection.

23 CHIEF JUDGE CHACKIN: All right.

24 MR. SHAINIS: Thank you.

25 CHIEF JUDGE CHACKIN: Next exhibit?

1 MR. SCHAUBLE: Your Honor, at this time I move  
2 Bureau Exhibit 19 into evidence.

3 CHIEF JUDGE CHACKIN: Any objection? Nineteen is  
4 what? That's a --

5 MR. SCHAUBLE: That's the -- Kay's --

6 CHIEF JUDGE CHACKIN: Oh, I see. Kay's answers to  
7 interrogatories?

8 MR. SCHAUBLE: Yes.

9 CHIEF JUDGE CHACKIN: Any objection?

10 MR. SHAINIS: No, Your Honor.

11 CHIEF JUDGE CHACKIN: Bureau Exhibit 19 is  
12 received.

13 (The document referred to,  
14 having been previously marked  
15 for identification as Bureau  
16 Exhibit 19, was received in  
17 evidence.)

18 MR. SCHAUBLE: Your Honor, at this time I'd like  
19 to move Bureau Exhibit 20 into evidence. Before I do it,  
20 there's been some question about the nature of this  
21 document.

22 CHIEF JUDGE CHACKIN: All right.

23 MR. SCHAUBLE: This is a printout from the  
24 Commission's licensing database for land mobil.

25 MR. KNOWLES-KELLETT: It's a printout using the

1 Commission's all maps viewer, Your Honor.

2 CHIEF JUDGE CHACKIN: All map what? I didn't hear  
3 you.

4 MR. KNOWLES-KELLETT: All maps viewer, which is  
5 the routine way that we process licenses.

6 CHIEF JUDGE CHACKIN: You're saying this is a  
7 printout which is available to case counsel?

8 MR. KNOWLES-KELLETT: If you go through ITS and  
9 ask for a genmen printout, I'm told that you get this same  
10 answer.

11 MR. SCHAUBLE: And also, Your Honor, the  
12 underlying database is available --

13 MR. KNOWLES-KELLETT: On the Web weekly. The data  
14 in this printout is put in a zip file.

15 MR. KELLER: Your Honor, first of all, we're not  
16 sure we agree or understand. We've done some preliminary  
17 checking, and we're not sure we agree that this material is  
18 routinely available, at least not in the form that is  
19 presented here.

20 More importantly, however, if I'm understanding  
21 the order of these exhibits, and I guess the Court is going  
22 to have to wait and see how the Bureau argued its case, at  
23 least in many instances these documents are being offered in  
24 lieu of licenses. And I believe they're being offered, at  
25 least in part if not solely, for purposes of demonstrating

1     that this is the authorized number of mobiles on a  
2     particular station.

3             That being the case, and in view of the fact that  
4     some of the arguments here is there may have been allegedly  
5     misstatements of loading compared to what was authorized, I  
6     think the relevant data is the license that was received by  
7     Mr. Kay, not what is currently show in some database.

8             MR. KNOWLES-KELLETT: Your Honor, this is not some  
9     database, Your Honor. This is our database.

10            MR. SCHAUBLE: This is the official database.

11            MR. SHAINIS: And who is going to be able to  
12     authenticate that database?

13            MR. SCHAUBLE: We're asking for official notice of  
14     these records.

15            MR. SHAINIS: Of a database. But what you've done  
16     is you've generated a document.

17            MR. KNOWLES-KELLETT: You can compare it to your  
18     licenses.

19            MR. SHAINIS: Well, you've generated a document at  
20     your request. I don't know who generated the document. I'd  
21     like to find out what data was used in generating the  
22     document and examine that data. The Commission's database  
23     is notoriously incorrect. You can take official notice of  
24     its inconsistencies and its incorrectness.

25            MR. KNOWLES-KELLETT: Mr. Kay --

1           MR. SHAINIS: Why don't you give the best evidence  
2       which would be the license?

3           MR. KNOWLES-KELLETT: Mr. Kay is required to keep  
4       copies of all his station licenses at his stations. The  
5       Commission field personnel went to inspect those stations.  
6       They took a month doing it. Mr. Kay came up with none of  
7       the required station records required by Part 90, zero.  
8       We'll put on a witness to that effect.

9           We do not keep reference license copy forms of his  
10      licenses. What the Commission maintains for Part 90  
11      licenses is a database that when we use it, we print it out  
12      in this format. Now, we could artificially generate  
13      possibly reference copy licenses but this is the same data.  
14      This is the official database, and there's no basis at all  
15      for this objection.

16           If they feel that this is not the correct license  
17      number of mobiles, Kay has -- is required to maintain copies  
18      of his licenses. If he shows us a copy of his license,  
19      we'll discuss it that point.

20           MR. SHAINIS: Your Honor, they have submitted in  
21      numerous instances, and if you want to take the time, I'll  
22      go through each exhibit, but these licenses --

23           MR. KNOWLES-KELLETT: Where they were stuck in a  
24      folder, we do it. We do not maintain them.

25           MR. SHAINIS: Well, I'm not saying it's more of a

1 question that no one wanted to make the effort to go through  
2 the Commission's files to get the licenses.

3 MR. SHAINIS: I mean, the Commission should have  
4 the licenses. Your Honor, the way the Bureau is operating  
5 is no different than the way the Mass Media Bureau operates  
6 and the Mass Media Bureau keeps licenses.

7 MR. KNOWLES-KELLETT: I don't think Mr. Shainis  
8 knows what he's talking about.

9 MR. SCHAUBLE: Your Honor, the Wireless Bureau has  
10 hundreds of thousands of -- we just don't have the  
11 records -- you know, we just don't keep the comprehensive  
12 file with every single license that the Bureau issues.

13 MR. KNOWLES-KELLETT: These records are as good as  
14 licenses.

15 MR. SHAINIS: It's not the licenses. That's the  
16 point.

17 MR. KNOWLES-KELLETT: Well, it doesn't matter.

18 MR. SHAINIS: It certainly does.

19 MR. KELLER: Was this the same database that was  
20 in effect at the time these licenses were issued?

21 MR. KNOWLES-KELLETT: Yes.

22 MR. KELLER: We're certain of that?

23 MR. SCHAUBLE: Yes.

24 MR. KELLER: And do we have a witness to --

25 MR. SCHAUBLE: None required, Your Honor.

1 MR. KNOWLES-KELLETT: These are official records.

2 MR. KELLER: I believe that the Commission --

3 CHIEF JUDGE CHACKIN: Who filed this information?

4 MR. KNOWLES-KELLETT: There was a paralegal in my  
5 office, Your Honor.

6 CHIEF JUDGE CHACKIN: And you say this can be  
7 duplicated by Kay? They could obtain this very information?

8 MR. KNOWLES-KELLETT: Right.

9 CHIEF JUDGE CHACKIN: It doesn't require analysis.  
10 They can obtain this information?

11 MR. KNOWLES-KELLETT: I was told that if you call  
12 ITS and ask for a genmen printout of your license, this is  
13 what you get.

14 CHIEF JUDGE CHACKIN: Under those circumstances, I  
15 will receive this material as reliable. So, if Kay has any  
16 licenses which show mistakes had been made, they can point  
17 it out. But I think official database is reliable material  
18 and can be accepted, particularly, since the same material  
19 is available to Kay. If it proves not to be the case, then  
20 of course, I will reconsider my ruling. But under the  
21 circumstances, I will receive the exhibit.

22 (The document referred to,  
23 having been previously marked  
24 for identification as Bureau  
25 Exhibit 20, was received in



1 evidence.)

2 MR. SCHAUBLE: Your Honor, at this time I move WTB  
3 Exhibit 21 into evidence.

4 CHIEF JUDGE CHACKIN: This is another official  
5 database materials?

6 MR. SCHAUBLE: Yes, Your Honor.

7 CHIEF JUDGE CHACKIN: And the same way, it's also  
8 available to Kay this material?

9 MR. SCHAUBLE: That's correct, Your Honor, for all  
10 these database printouts.

11 MR. SHAINIS: Your Honor, I object. I don't  
12 believe it is available to Kay. I mean, I sent my paralegal  
13 over with one of these to try and get -- find out what was  
14 going on and Kay came back empty-handed and said they never  
15 heard of it. I mean, what happened was the Bureau, I  
16 believe, in desperation because they didn't have licenses  
17 essentially took and manufactured this document.

18 CHIEF JUDGE CHACKIN: Well, let's hear what the  
19 Bureau has to say about that. Is this material available to  
20 Kay?

21 MR. KNOWLES-KELLETT: I am told that if you call  
22 ITS and ask for a genmen printout of call sign, you will get  
23 this document, Your Honor. You know, I am told the same  
24 data without this particular viewer is posted on the FCC  
25 Website every week, the WTB Web page under the FCC.com,

1     there is a zip file with this data zipped together.  So,  
2     regardless of the viewer that you use, this data is public  
3     record all the time.  On a weekly basis, it's updated.

4             MR. SHAINIS:  The way this data is formulated, if  
5     it was formulated for the convenience of this hearing that  
6     does not allow us to take official notice --

7             CHIEF JUDGE CHACKIN:  Wait a minute.  Wasn't it  
8     formed later or is available -- public information available  
9     to the public concerning --

10            MR. SHAINIS:  In this format.

11            MR. KNOWLES-KELLETT:  In this format, Your Honor,  
12     my understanding is it's available to the public.  And  
13     regardless of whether it prints out exactly like this or  
14     not, it's still an official record.  If we both have a Word  
15     Perfect document and your Word Perfect prints it out just  
16     slightly different margins than mine, still if it's in the  
17     database as a Commission Word Perfect document, say, on the  
18     Web site, it's no less a Commission record because your  
19     viewer prints it differently than my viewer.

20            MR. KELLER:  Is it not true, though, that the  
21     database was changed substantially within the last couple of  
22     years?  The Commission used to keep its stuff on main frame  
23     computers and made a switch over to PCs.  And the data  
24     that's on the Web also was not available prior to '95 or '96  
25     at the earliest.

1           So, this data could not possibly be the same data  
2   from which the licenses were originally -- or I have serious  
3   question as to whether its the same data in which the  
4   licenses were originally generated. I mean, it might have  
5   been something that was carried over or updated, but it's  
6   not the same database.

7           MR. KNOWLES-KELLETT: We're not representing that  
8   this initial data is the license. I believe --

9           CHIEF JUDGE CHACKIN: You're representing what?  
10   That this is current?

11          MR. KNOWLES-KELLETT: No. Actually, this was  
12   printed I think April '96 in anticipation of the  
13   Commission's inspections, but I can get that date for you  
14   exactly, Your Honor. There's been a hold on his licenses.  
15   His licenses have not changed to date present to this  
16   proceeding. So, this is as of any date during the  
17   proceedings.

18          MR. SHAINIS: Some of his licenses have changed.

19          MR. KNOWLES-KELLETT: My understanding is that  
20   they were not supposed to. There were a few -- he's right,  
21   Your Honor, that a few were canceled erroneously and placed  
22   back on the database.

23          MR. KELLER: And some of have not been there, too.

24          CHIEF JUDGE CHACKIN: Is this accurate material?

25          MR. KNOWLES-KELLETT: Yes.

1 MR. SCHAUBLE: Yes, Your Honor.

2 CHIEF JUDGE CHACKIN: Well, what about what he  
3 just said, that there's been cancellations. Has that  
4 affected it or what?

5 MR. KNOWLES-KELLETT: The status has not changed  
6 the case licenses. Some because we had holds on renewals,  
7 because the Commission could not -- we did not intend to  
8 purposely say take from this tribunal the duty of saying  
9 that Kay is fit to be a licensee and renew his licenses.  
10 They were not supposed to renew any licenses. Some of them  
11 were therefore purged and the automatic purge because no  
12 renewal was granted. However, that was just an erroneous  
13 purge is my understanding.

14 MR. SHAINIS: But is effects the database.  
15 I mean --

16 MR. SCHAUBLE: Your Honor, they may have the  
17 access to the underlying data. I mean, if they come to us  
18 and point us out saying, "Look, we think this is wrong,"  
19 we'll revisit that. And if there's an error, then  
20 obviously --

21 MR. SHAINIS: Your Honor, that's not our burden to  
22 do.

23 CHIEF JUDGE CHACKIN: Well, let's talk about this  
24 exhibit. What is it supposed to show?

25 MR. KNOWLES-KELLETT: With respect to most of the

1 issues --

2 CHIEF JUDGE CHACKIN: Well, let's take this 21.

3 MR. SCHAUBLE: Your Honor, the pertinent  
4 information on the first page is call sign and the licensee  
5 name. The second line, the name. That's the licensee name.  
6 And then if you go to -- on the second page, there's a type  
7 of radio service.

8 CHIEF JUDGE CHACKIN: Yes.

9 MR. SCHAUBLE: Which can impact the loading  
10 requirements for that particular service.

11 MR. KNOWLES-KELLETT: The type of radio service is  
12 the bottom right-hand corner, Your Honor. Type radio  
13 service, IB.

14 CHIEF JUDGE CHACKIN: All right. That's all it  
15 shows?

16 MR. KNOWLES-KELLETT: Well --

17 MR. SCHAUBLE: There is additional information.

18 MR. KNOWLES-KELLETT: There's an address field.

19 MR. SHAINIS: What is the address supposed to be?

20 MR. SCHAUBLE: On page 2, if you go -- that's  
21 the --

22 MR. SHAINIS: On page 3, you said there's an  
23 address.

24 MR. SCHAUBLE: On page 2.

25 MR. SHAINIS: On page 2, it's Kay's address in Van

1 Nuys.

2 MR. KNOWLES-KELLETT: And page 3, that's the  
3 transmitter address. And it's keyed to the -- and page 4  
4 has reference concerning the authorized frequencies.

5 MR. SHAINIS: Your Honor, if I might, have you  
6 made any efforts to verify this information as to its  
7 accuracy?

8 MR. KNOWLES-KELLETT: The way I get accurate  
9 information is to ask the people who process licenses daily  
10 to print out the database -- current database record. This  
11 is the way we verify the accuracy of information, because  
12 this is the official record.

13 MR. SHAINIS: Do you make any effort to verify the  
14 accuracy of the information in this exhibit?

15 MR. KNOWLES-KELLETT: What kind of effort would  
16 you suggest, Mr. Shainis?

17 MR. SHAINIS: Well, for example, you could have  
18 called us up and asked us -- at least, even spot checked to  
19 see whether it's accurate -- the accuracy. You could have  
20 looked at official Commission -- other databases to see if  
21 the address is correct for the site. I'm just asking if you  
22 took any steps at all to verify its accuracy.

23 MR. SCHAUBLE: Your Honor, this is the official  
24 record. I mean --

25 MR. SHAINIS: That doesn't mean it's accurate.

1 I'm asking you if you took any steps to verify it. I'm just  
2 asking. You're the one that's trying to get this in.

3 MR. KNOWLES-KELLETT: Your Honor -- I mean, this  
4 is a matter that can be officially noticed.

5 MR. SCHAUBLE: This is official authorized --

6 MR. KNOWLES-KELLETT: Yes. It doesn't get better  
7 than this, Your Honor. That's the problem.

8 CHIEF JUDGE CHACKIN: Who prepares this? How is  
9 this database developed? Who is responsible for that?

10 MR. KNOWLES-KELLETT: What happens is licenses  
11 come in to get approved, Your Honor. They come in via  
12 Mellon Bank. At Mellon Bank the fee is checked. The  
13 application then goes to Gettysburg. The application is  
14 keyed. It is process in case of SRMs. It is coordinated by  
15 the Commission. In the case of other radio services, for  
16 example, the one here the Industrial Business Service, it's  
17 a coordinated radio service, coordinated by a frequency  
18 coordinator. That coordinator checks that the frequency is  
19 available. Sends his recommendation on, as well.

20 That then is processed by the Commission. They  
21 change parameters as necessary to make the station work.  
22 The light broadcasting licensing stations are site by site  
23 license station, and we try very hard not to have them  
24 interfere with each other.

25 And so, between the processors and the

1 application, the application provides most of the data. The  
2 processors, you know, will -- if there are not that many  
3 mobile clubs available, knock it down -- whatever. And that  
4 becomes the license. A license is sent out to the licensee.  
5 And we keep a record of that license.

6 MR. SHAINIS: And you don't keep a copy of the  
7 license?

8 MR. KNOWLES-KELLETT: In some cases, we do keep a  
9 copy of the license. In other cases, we don't. We do not  
10 maintain copies of all these licenses. Some of the licenses  
11 in these types may have been sent to archives. Some of them  
12 may have gone down a creek next to the Gettysburg in a flood  
13 three years ago where we got 12 inches of rain in one night  
14 and many records went down the creek.

15 None of those records are official records. Our  
16 official records are in the database. In the case of a  
17 discrepancy, we would go by this until shown otherwise.

18 MR. SHAINIS: Have you checked to see whether  
19 archives had a copy of the license in this instance?

20 MR. KNOWLES-KELLETT: I did not.

21 MR. SHAINIS: Also, for example, you're talking  
22 about accuracy of data. In the case of where towers had to  
23 be registered, and the Commission sent out routinely letters  
24 asking for information on the powers, it's been reported  
25 that there's been a significant number of people who have



1 not ever gotten those letters for tower registration because  
2 the Commission's databases were so -- the addresses were  
3 incorrect.

4 Your Honor, I just question the Commission's  
5 database. It's been notorious for --

6 MR. KNOWLES-KELLETT: Your Honor, he has full  
7 opportunity to prove our database is indicated.

8 MR. SHAINIS: That's not my problem. That's not  
9 my burden.

10 CHIEF JUDGE CHACKIN: Wait a minute. I'm going to  
11 take official notice of the Commission's official database.  
12 If you can show that some -- any of this information is  
13 incorrect, you can show it. But this is the Commission's  
14 official database, and I'm satisfied that this is a reliable  
15 basis unless you show me otherwise, Mr. Shainis.

16 I'm going to receive this material. This is --  
17 Bureau Exhibit 21 will be received. And the rest of these  
18 also excerpts from official database? Talking about 22 --

19 MR. SCHAUBLE: Your Honor, 22 through 30 are  
20 excerpts.

21 CHIEF JUDGE CHACKIN: All right. I'm satisfied  
22 that official notice has been requested and official notice  
23 can be taken of the Commission's database, and I'm going to  
24 receive these documents.

25 Again, Mr. Shainis, under the circumstances it's

1 up to you to prove that specific material in this database  
2 is incorrect. Otherwise, it's reasonable to take official  
3 notice of the Commission's official records.

4 And so, I will receive Bureau Exhibit 21 through  
5 30. Thirty, is it?

6 MR. SCHAUBLE: There's a bunch of it. There are  
7 some licenses and applications --

8 CHIEF JUDGE CHACKIN: All right. But through 30  
9 is excerpts from the Commission database. Is that correct?

10 MR. SCHAUBLE: Correct, Your Honor.

11 CHIEF JUDGE CHACKIN: All right. Twenty-one  
12 through thirty will be received.

13 (The documents referred to,  
14 having been previously marked  
15 for identification as Bureau  
16 Exhibits 21 through 30, were  
17 received in evidence.)

18 MR. SCHAUBLE: Your Honor, we move Bureau Exhibit  
19 31 into evidence. This is one of the call signs for which  
20 we had a radio station license available for this particular  
21 call sign.

22 CHIEF JUDGE CHACKIN: Any objection of taking  
23 official notice?

24 MR. SHAINIS: No, Your Honor, under the  
25 circumstances.

1 CHIEF JUDGE CHACKIN: All right. The exhibit will  
2 be received.

3 (The document referred to,  
4 having been previously marked  
5 for identification as Bureau  
6 Exhibit 31, was received in  
7 evidence.)

8 CHIEF JUDGE CHACKIN: Same thing with 32?

9 MR. SCHAUBLE: Your Honor, 32 is an application  
10 filed by Mr. Kay with respect to this particular call sign.

11 CHIEF JUDGE CHACKIN: Any objection?

12 MR. SHAINIS: Your Honor, I'd like to ask what the  
13 relevance is.

14 CHIEF JUDGE CHACKIN: All right. What's the  
15 relevancy of 32?

16 MR. SCHAUBLE: Your Honor, this application and  
17 there will be other applications like this also. If you go  
18 down --

19 CHIEF JUDGE CHACKIN: What issue is relevant?

20 MR. SCHAUBLE: The loading issue, Your Honor.

21 CHIEF JUDGE CHACKIN: How is it relevant to the  
22 loading issue?

23 MR. SCHAUBLE: Okay. If you go back to -- go  
24 towards the first area you go down, under two you see a  
25 class MO.

1 CHIEF JUDGE CHACKIN: Where is this now?

2 MR. KNOWLES-KELLETT: Top left-hand corner, second  
3 column.

4 MR. SCHAUBLE: Page 1.

5 CHIEF JUDGE CHACKIN: Second column?

6 MR. KNOWLES-KELLETT: It says, "MO."

7 CHIEF JUDGE CHACKIN: Yes.

8 MR. KNOWLES-KELLETT: That refers to the number of  
9 mobile units license.

10 MR. SCHAUBLE: For which Mr. Kay is seeking  
11 authorization to operate.

12 CHIEF JUDGE CHACKIN: I see.

13 MR. KNOWLES-KELLETT: Okay. Down -- eight-tenths  
14 of the way down that side of the page, you see the purpose  
15 of the license is to create increased mobiles and add  
16 digital emissions.

17 MR. SCHAUBLE: So, this was an application by  
18 which Mr. Kay sought to increase the number of authorized  
19 mobiles.

20 CHIEF JUDGE CHACKIN: All right.

21 MR. SCHAUBLE: It's basically his representation  
22 concerning loading.

23 MR. KELLER: Well, that's not a representation  
24 concerning loading, though. I beg to differ. It's a  
25 request for an authorized number of mobiles. My

1 understanding under the Commission's rules is assuming this  
2 application gets granted, the licensee would have a period  
3 of time after that grant to load to their level.

4 So, this is not a representation. It is a  
5 request. And therefore, I still do not know how --

6 MR. SCHAUBLE: I think it's a representation that  
7 within a given time period.

8 CHIEF JUDGE CHACKIN: To do what?

9 MR. KNOWLES-KELLETT: That he would be operating  
10 this number of mobiles.

11 MR. SCHAUBLE: Under our rules, Your Honor, if you  
12 -- just on a conventional station, you know, if you're not  
13 operating the number of mobiles authorized, you're required  
14 to file an application to reduce your loading accordingly.

15 CHIEF JUDGE CHACKIN: Yes. But what does this  
16 document show? What is it supposed to show? That he  
17 exceeded his loading?

18 MR. SCHAUBLE: What this shows, Your Honor, at  
19 this point in time he was seeking authority to operate 77  
20 mobiles on this channel, well within a given time.

21 MR. KELLER: Right. He was asking for authority,  
22 but number one, that's just a request for authority. Number  
23 two, there's a period of time allowed after the grant in  
24 order to achieve that level. Number three, the requirements  
25 that, depending on the timeframe we're talking about, the

1 requirement to reduce your loading count, I believe was  
2 clarified by the Commission at some point later as applying  
3 only if the difference between your actual loading and your  
4 authorized loading would affect exclusivity.

5 So, in other words, the Commission cannot clarify  
6 "we do not want to see reduction applications in every  
7 single case, only when it goes below the exclusive level."  
8 So, all this is, is an application that was filed requesting  
9 77 mobiles. I don't see that it has any import of any kind.

10 MR. SCHAUBLE: Well, Your Honor, the import is I  
11 believe this is one of the stations for which the time came  
12 when we asked Mr. Kay for his loading information, I don't  
13 believe he was able to produce any evidence that he had any  
14 mobiles on this -- you know, he was claiming exclusivity.  
15 You know, he was claiming he had 77 mobiles on this channel  
16 which prevented other people from, you know, filing for this  
17 channel. And instead of 77 --

18 MR. KELLER: But this document doesn't prove that.  
19 This document doesn't even offer evidence of that. What  
20 would offer evidence of that would be perhaps an  
21 authorization granted beyond the eight-month period or the  
22 one-year period, whichever is applicable, and then that begs  
23 the question of whether or not Mr. Kay was loaded. That's  
24 your interpretation of the record. But this document is  
25 simply a request prior to the fact.

1           MR. SCHAUBLE: Your Honor, this has to be read in  
2 conjunction with other documents. For instance, if you go  
3 back to the prior exhibit, which is the radio station  
4 license --

5           CHIEF JUDGE CHACKIN: All right.

6           MR. SCHAUBLE: -- it shows that he was granted an  
7 authorization.

8           CHIEF JUDGE CHACKIN: This is 31 we're talking  
9 about?

10          MR. SCHAUBLE: Thirty-one, Your Honor. You notice  
11 it's the same call sign, WIL342. And if you go down --  
12 again, if you go down on the station class, MO, that's what  
13 stands for mobiles, Your Honor.

14          MR. KELLER: I understand it does. But then what  
15 does the application add to this?

16          MR. SCHAUBLE: Your Honor, so it completes the  
17 record provides additional evidence that Mr. Kay requested  
18 this number of mobiles. This is under his signature and  
19 shows additional evidence that he represented -- that he  
20 made this request for this number of mobiles.

21          CHIEF JUDGE CHACKIN: Yes, but what does that have  
22 to do with any of the issues?

23          MR. KNOWLES-KELLETT: It has to do with -- when we  
24 asked Kay for his loading records, Your Honor, Kay did not  
25 produce any loading records. He has no loading on this

1 station. If he's not operating any, and he's attesting that  
2 he's going to operate 77 if granted, he's holding an  
3 exclusive license for this frequency. I can't tell you for  
4 sure, Your Honor, that this was exclusive. He's holding an  
5 authorization for this frequency in L.A. without operating  
6 anybody on it. And that's what this case is designated  
7 about, was whether he was hoarding channels.

8 MR. SCHAUBLE: Your Honor, there's a phenomenon  
9 called paper hoarding where you say you have "x" number of  
10 mobiles, and you tie up the frequency and prevent other  
11 people from using it, when in fact, you don't have that  
12 number of mobiles operating.

13 CHIEF JUDGE CHACKIN: Mr. Keller?

14 MR. KELLER: Well, I was going to say, again, that  
15 again goes to the license. And I'm not conceding that he  
16 wasn't loaded. I understand that's your interpretation of  
17 certain records that were submitted. But that's -- how you  
18 interpret the records is a major problem in this case.

19 But what you're talking about is the  
20 authorization. Once the authorization is granted, this  
21 being -- and I believe, you can correct me if I'm wrong. I  
22 believe that at this time when this license was granted,  
23 which was back in '93, the issue had been first of all  
24 whether within eight months from this grant date he was  
25 loaded, not what he requested back when he originally filed



1     for it.

2                   And number two, then even assuming he were not  
3     loaded to a prescribed level whether under the FCC rules,  
4     (a) this wasn't exclusive or not. As you just acknowledged,  
5     you don't know one way or the other. I mean, it may well be  
6     that notwithstanding his 77 mobiles, he was not exclusive on  
7     this channel. And (b), under the FCC's interpretations  
8     whether he was in fact required to reduce his mobile count.  
9     Unless he was claiming or unless he obtained exclusivity and  
10    unless the difference in the actual loading count versus the  
11    authorized loading count effected that straddling of  
12    exclusivity, if you will, there was no obligation to file  
13    it.

14                  But however all that plays out, the original  
15    application is not relevant. What's relevant is he got an  
16    authorization in 1993 that authorized 77 mobiles. We go  
17    from there.

18                  CHIEF JUDGE CHACKIN: I'm satisfied. Your Exhibit  
19    32 is rejected. It's not relevant.

20                               (The document referred to,  
21                               having been previously marked  
22                               for identification as Bureau  
23                               Exhibit 32, was rejected.)

24                  CHIEF JUDGE CHACKIN: All right. Let's continue.

25                  MR. SCHAUBLE: Your Honor, at this time I move

1 Bureau Exhibits 33 through 35.

2 CHIEF JUDGE CHACKIN: All right. These are  
3 excerpts from Commission's official database?

4 MR. SCHAUBLE: Correct, Your Honor.

5 CHIEF JUDGE CHACKIN: The material will be --

6 MR. SHAINIS: Your Honor, before -- and I'm not  
7 objecting to your ruling.

8 CHIEF JUDGE CHACKIN: All right.

9 MR. SHAINIS: But let me ask you a question.  
10 Supposing Mr. Kay says that the frequency information is  
11 incorrect.

12 CHIEF JUDGE CHACKIN: All right.

13 MR. SHAINIS: That it is not correct. Would that  
14 be acceptable to you then to reject these exhibits?

15 CHIEF JUDGE CHACKIN: Each specific -- if you  
16 could show any of this material is incorrect, Mr. Kay could  
17 show by his license what other information he has in the  
18 material is incorrect, then obviously I will then --

19 MR. SHAINIS: I mean, I guess my question is, I  
20 don't want Mr. Kay to have to do the Bureau's work for them.  
21 If he says it's incorrect --

22 MR. SCHAUBLE: Your Honor, we've done our work --

23 MR. SHAINIS: -- would you allow the Bureau then  
24 to just merely reform the exhibits?

25 CHIEF JUDGE CHACKIN: The Bureau will not reform

1 the exhibits. All the Bureau can do is rely on the official  
2 database. That's what they put in. They've taken official  
3 notice of that. If some data in the official database is  
4 wrong and Mr. Kay could show it, then that'll be the case.  
5 That material will -- Mr. Kay's correction will then be in  
6 the record if he can show it by evidence.

7 MR. SHAINIS: All right.

8 CHIEF JUDGE CHACKIN: All I'm doing is taking  
9 official notice of the Commission's database.

10 MR. SHAINIS: Fine, Your Honor.

11 CHIEF JUDGE CHACKIN: Of course that doesn't mean  
12 that even the database can be wrong, because they have been  
13 wrong in other cases. But all I'm saying is it's proper to  
14 take official notice of the Commission's official database.

15 MR. SHAINIS: I mean, are you satisfied -- I'm not  
16 satisfied this is the Commission's official database.

17 CHIEF JUDGE CHACKIN: Well, according to the  
18 representations made by Counsel, this material can be  
19 obtained in one of two ways, Counsel has indicated. If you  
20 make some kind of effort to follow what they're saying, if  
21 you can't find it on the Web page or another way they  
22 indicated, then we'll just have to take a look again and see  
23 whether or not -- by official database, we're talking about  
24 material that's available not just to the Commission but  
25 members of the public. And if that's the case, and the

1 Bureau has made their representation. Is that correct?

2 MR. SCHAUBLE: That's correct, Your Honor.

3 CHIEF JUDGE CHACKIN: Well, under those  
4 circumstances, I'm receiving the material. If you could  
5 show that this was some analysis with material which is not  
6 available, which is confidential, then of course, that's a  
7 different story.

8 So, I will receive Bureau Exhibits 33, 34 and 35.

9 (The documents referred to,  
10 having been previously marked  
11 for identification as Bureau  
12 Exhibits 33, 34 and 35, were  
13 received in evidence.)

14 MR. SCHAUBLE: Your Honor, at this time I move  
15 Bureau Exhibit 36 into evidence. This is the radio station  
16 license.

17 CHIEF JUDGE CHACKIN: Any objection?

18 MR. SHAINIS: No objection.

19 CHIEF JUDGE CHACKIN: Bureau Exhibit 36 is  
20 received.

21 (The document referred to,  
22 having been previously marked  
23 for identification as Bureau  
24 Exhibit 36, was received in  
25 evidence.)

1           MR. SCHAUBLE: Your Honor, at this time I move  
2 Bureau Exhibit 37 into evidence. That's an application  
3 filed by Mr. Kay. And we'd note that under purpose -- this  
4 is an application filed by Mr. Kay to increase the mobile  
5 count on this particular station.

6           MR. KELLER: Your Honor, we'd make the same  
7 objection that we did for 32, yes.

8           CHIEF JUDGE CHACKIN: All right. Bureau Exhibit  
9 37 is rejected.

10                           (The document referred to,  
11                           having been previously marked  
12                           for identification as Bureau  
13                           Exhibit 37, was rejected.)

14           MR. SCHAUBLE: Your Honor, at this time I move  
15 Bureau Exhibit 38 into evidence. That's another database  
16 record.

17           CHIEF JUDGE CHACKIN: All right. Bureau Exhibit  
18 38 is received, official notice.

19                           (The document referred to,  
20                           having been previously marked  
21                           for identification as Bureau  
22                           Exhibit 38, was received in  
23                           evidence.)

24           MR. SCHAUBLE: Your Honor, at this time I move  
25 Bureau Exhibit 39 into evidence. That's another radio